

Message

From: [REDACTED] (OFM - Legal Services Department) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EB29C4AB3A384F07A3C665943678506D-ROBERTS, BE]
Sent: 13/03/2020 16:08:49
To: PS Counsel General & Minister for European Transition [ps.counselgeneral@gov.wales]
CC: Lentle, Helen (OFM - Legal Services Department) [helen.lentle@gov.wales]; Dunning, Diane (OFM - Legal Services Department) [diane.dunning@gov.wales]; Buffin, Neil (OFM - Legal Services Department) [neil.buffin@gov.wales]; [REDACTED] (PSG - HR - Expert Services) [REDACTED]@gov.wales; [REDACTED] (OFM - Legal Services Department) [REDACTED]@gov.wales; [REDACTED] (OFMCO - Legal Services) [REDACTED]@gov.wales
Subject: Advice on competence to ban mass gatherings

Dear [REDACTED]

Please find below a response to the Counsel General's query on behalf of Helen. Please do not hesitate to let us know should the Counsel General require anything further on this.

Limiting mass gatherings due to Coronavirus would have a clear, overall public health purpose of preventing and managing the spread of illness and death which is of course a devolved area.

However, there is a tension in this context between reserved and devolved areas.

An Act of the Senedd in this area would likely be classed as having the immediate objective of making emergency provision in the overall context of a public health issue. However, as a result, there would be a number of reserved matters which would require consideration depending on the nature of the legislative provision in question and would mean that the ability of the Senedd to legislate in this area would not be clear cut and that there would be a risk that we could not legislate coherently, independently.

Primarily, the reservation at paragraph 47 of Schedule 7A of 'emergency powers'. But also potentially reserved matters such as 'the maintenance of public order' at paragraph 40. In addition, in enforcing any such proposed provision, it could be necessary to confer duties on a number of reserved authorities (such as constables) which could again limit the scope of the Senedd's ability to legislate coherently in this area without UK Ministerial consent.

Within the draft Coronavirus (Emergency) Bill, there are currently provisions which confer powers on the Secretary of State to give directions in relation to the holding of events or gatherings and premises including limiting mass gatherings.

Our understanding of the policy position is that the Welsh Government is (in line with the position taken by the other devolved administrations) pursuing equivalent powers in relation to Wales for the Welsh Ministers and that draft provisions are expected to be received from OPC this afternoon. (We have instructed that this should be a power for Welsh Ministers with no concurrent power for Secretary of State in relation to Wales and will request that it is not linked to the legislative competence of the Senedd.)

Pursuing such powers for the Welsh Ministers under an Act of Parliament would mean that there would be no question mark over competence which may be preferable in an emergency situation.

Best wishes,

[REDACTED]

NR

Cyfreithwraig | Lawyer
Yr Adran Gwasanaethau Cyfreithiol | Legal Services Department
Swyddfa'r Prif Weinidog | Office of the First Minister
Llywodraeth Cymru | Welsh Government



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PWYSIG: Mae'n bosibl bod yr ohebiaeth neu'r ddogfen hon ac unrhyw beth sydd wedi'i amgáu gyda hi yn cynnwys cyngor cyfreithiol sydd wedi'i roi yn gyfrinachol i Lywodraeth Cynulliad Cymru, a hwnnw'n gyngor a allai fod yn destun baint broffesiynol gyfreithiol. Os ydych wedi cael yr ohebiaeth neu'r ddogfen hon drwy gamgymeriad, byddwchystal â rhoi gwybod i'r awdur ar unwaith drwy ei ffonio."

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From: PS Counsel General & Minister for European Transition <PS.CounselGeneral@gov.wales>

Sent: 13 March 2020 10:13

To: NR (OFM - Legal Services Department NR @gov.wales; Lentle, Helen (OFM - Legal Services Department) <Helen.Lentle@gov.wales>

Cc: PS Counsel General & Minister for European Transition <PS.CounselGeneral@gov.wales>

Subject: Advice on competence to ban mass gatherings

Morning both,

Counsel General has asked if we have any competence in relation to limiting mass gatherings due to Coronavirus? He understands there have been questions over this in recent days.

Thanks

NR

Senior Private Secretary | Prif Ysgrifennydd Preifat

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